

FOREIGN SERVICE DISPATCH

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JAN 24 1962

FROM : *1/27/62*

TO : THE DEPARTMENT OF STATE, WASHINGTON.

REF :

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22	ACTION	DEPT.
For Dept.	L-2	RM/R-2 REP-1 ARA-3 INC-5 E-3 AID-7 EUR-3 IO-2 U/FW-2
Use Only	REC'D	OTHER
1/27/62		CUM-10 INT-7 TR-2 FMC-1 ARMY-3 CIA-11 NAVY-3 OSD-3 USIA-8 NSA-3

SUBJECT: Note of British Embassy to Uruguayan Foreign Ministry on  
Uruguayan-Argentine Declaration of January 30, 1961, on External  
Limits of Rio de la Plata

The British Embassy in Montevideo sent on December 26, 1961, a note to the Ministry of Foreign Relations of Uruguay, raising certain questions with respect to the Declaration of Uruguay and Argentina, signed January 30, 1961, establishing the external limits of the Rio de la Plata (River Plate). (See Embdesp 658, Feb. 3, 1961). The note reviews previous Uruguayan laws and regulations on navigable rivers and raises objections, based on international law, to any attempt of the two countries to establish the outer-limits of the broad estuary and to "divide it up among themselves." The note informs the Ministry that the United Kingdom reserves its position on the January 30, 1961, Declaration and "cannot accept it as derogating in any way from the rights enjoyed by the United Kingdom under specific treaties or by virtue of the application of recognized principles of international law."

Attached is a copy of the British Embassy's note.

For the Ambassador:

*Ralph S. Collins*

Ralph S. Collins  
First Secretary of Embassy

Enclosure: *ca*

Copy British Emb. Note No. 133

RSCollins:cg

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ACTION	ACTION	
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NAME OF OFFICER	DATE OF	DIRECTIONS
OFFICE SYMBOL	ACTION	TO RM/R

ACTION COPY — DEPARTMENT OF STATE

The action office must return this permanent record copy to RM/R files with an endorsement of action taken.

FROM Montevideo

No. 123

(1421/61)

Her Britannic Majesty's Embassy presents its compliments to the Ministry for Foreign Affairs of the Oriental Republic of Uruguay and, with reference to the Declaration signed on January 30, 1961 between the Minister for Foreign Affairs and the Argentine Ambassador purporting to lay down an external limit to the River Plate dividing it from the Atlantic Ocean, has the honour, on instructions from Her Majesty's Government in the United Kingdom, to draw the Ministry's attention to the following considerations.

2. Paragraph 3 (3) of the above-mentioned Declaration states that the juridical régime of the River Plate shall continue to be, as up to the present, that established in the Ramirez-Saenz Pena Protocol signed at Montevideo on January 5, 1910, and other international instruments in force, and by the laws and regulations of both riparian States.

3. In this connexion Her Majesty's Embassy has to draw the Ministry's attention to the law of the Uruguayan Government dated June 26, 1854, which states, in Article 1, "The navigable rivers of the country are open to the ships and the commerce of all nations." The amendment of this law effected by the law of May 7, 1862, Article 1 of which excepts internal rivers of which both banks are under Uruguayan jurisdiction from the concession granted by the law of 1854, cannot be regarded as withdrawing this concession from the River Plate since, whatever the status of that so-called "river" (and the views of Her Majesty's Government on this point are given below) only one of its banks, or shores, is under Uruguayan jurisdiction. The Declaration of January 30, 1961, states that the juridical system of the River Plate shall

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continue to be that established in the Ramirez-Saena Pena Protocol of January 5, 1910, which in turn stated that navigation and the use of the waters of the River Plate would continue without change as up to the present. Her Majesty's Government in the United Kingdom would be grateful to receive an assurance from the Uruguayan Government that the terms of the present Declaration by the Uruguayan and Argentine Governments are not intended to detract from the freedom of navigation recognised by the above-mentioned law of June 26, 1854 of the Uruguayan Government, and by the Ramirez-Saenz Pena Protocol.

4. The present Declaration also purports to define a base line across the mouth of the Rio de la Plata from which the territorial waters of the Argentine and of Uruguay are to be measured. In this connexion attention is drawn to the principles of international law which are applicable in respect of closing lines for bays (including such estuaries as come within the definition of a bay). According to these principles (which are reflected in Article 7 of the 1958 Convention on the Territorial Area and the Contiguous Zone) it is only where the entire bay is situated within the body of one country that any closing line can be drawn at all across the mouth of the bay (and Article 7 (4) of the above-mentioned Convention lays down that the closing line of a bay may in no circumstances exceed 24 miles). In all other cases (subject to the exceptions referred to below in paragraph 5) the general rule of international law is that each state bordering on the bay simply has the belt of territorial sea fronting this portion of the coast of the bay, and the rest of the bay is open seas. It is not, in general, open to the coastal States of the bay (even by agreement inter se) to draw a  
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closing line and, by claiming the waters of the bay as internal waters, to divide it up amongst themselves. Even if those States should make such an agreement, whatever effect it may have as between the parties to it, it can have none as against third States and their vessels, nor can it alter the general status of the waters of the bay outside the respective territorial belts, which will remain high seas. The attention of the Government of the Oriental Republic of Uruguay is also called to the protest made by Her Majesty's Minister at Montevideo on March 16, 1908, i.e. shortly before the Ramirez-Saenz Pena Protocol, recording the objections of Her Majesty's Government to the claim of the Uruguayan Government to extend their jurisdictional limit five miles from the shore and to treat the River Plate as territorial waters.

5. The exceptions referred to in paragraph 4 above are special agreements, or any exceptional claims which a State is able to establish by reason of a continuous usage extending over a long period of time and recognised, either expressly or implicitly, by other States. The absence of such exceptions in respect of the estuary of the River Plate is amply demonstrated by the 1854 Decree which, far from recognising the waters of the estuary as the internal waters of Uruguay explicitly affirms the principle of freedom of navigation for the merchant vessels of all nations on the rivers flowing into that estuary.

6. Although the principles referred to above would appear to be fully applicable to the estuary of the River Plate which qualifies as a bay within the generally accepted definition the Government of the Oriental Republic of Uruguay have purported to base themselves on Article 13 of the 1958 Convention on the Territorial Sea and the Contiguous Zone in drawing an imaginary line dividing the River Plate from the Atlantic Ocean, and claiming that this imaginary dividing line is the base line from which the respective belts of territorial

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and adjacent zones can be measured. In view of the general principles of international law summarised in paragraphs 4-5 above, however, there can be no doubt that this article was intended only to apply to a base-line drawn across a mouth of a river which flows directly into the sea from the territory of a single State, and not to a river whose coasts belong to two or more different States. Had the intention been otherwise there would have been serious derogation from the general principles referred to above and such derogation would have been expressly provided for. The Article was not, in any case, intended to apply to a so-called river such as the River Plate estuary which does not flow directly into the sea, but, to quote Colombo's "International Law of the Sea" (4th Revised Edition) consists of a "great estuary ..... approximately 200 miles long."

7. For the reasons stated in the preceding paragraphs the purported base line across the mouth of the Rio de la Plata is in the opinion of Her Majesty's Government in the United Kingdom inconsistent with the general principles of international law, and is unwarranted under any reasonable interpretation of Article 13 of the 1958 Geneva Convention. Her Britannic Majesty's Embassy is accordingly instructed to inform the Ministry that Her Majesty's Government in the United Kingdom reserve their position on the Declaration of January 30, 1961 made by the Uruguayan and Argentine Governments, and cannot accept it as derogating in any way from the rights enjoyed by the United Kingdom under specific treaties or by virtue of the application of recognised principles of international law.

8. Her Britannic Majesty's Embassy avails itself of this opportunity of renewing to the Ministry for Foreign Affairs the assurance of its highest consideration.

BRITISH EMBASSY,  
MONTEVIDEO.

December 26, 1961.